IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.902 OF 2003

IN

SUIT NO.841 OF 2003

Mrs.Amtobai wd/o Fazaleabbas Mamajiwala and Ors. .. Plaintiffs

Vs.

Hakimuddin Noman Mamajiwala and Ors. .. Defendants

Mr.J.M.Sidhwa i/b Zaidy and Co. for the plaintiffs

Mr.Shailesh Shah i/b Pandya and Poonawala for the defendants

CORAM : S.U.KAMDAR, J

DATED : 25TH AUGUST, 2005

P.C.:

1. By consent of the parties, the motion is placed on board for hearing and final disposal and called out. Heard the parties.

2. The present suit is filed in respect of property being godown situated at 111, Kazi Street, Mumbai 400 003. By the present suit, declaration

is sought that the plaintiffs are having 1/4th undivided share in the suit property. It has been contended that the suit property should be divided and alternative prayers are made that the defendants be ordered and decreed to pay Rs.6.0 lacs to the plaintiffs being 1/4th share in the suit property.

3. The father of the plaintiffs was a partner in partnership firm known as A.H.Mamajiwala & Co. It is the case of the defendants that inrespect of the aforesaid godown subsequent to the death of the partner there was a settlement between the plaintiffs and the defendants and each of the plaintiffs and the defendants executed a deed of release being Exhibits which are annexed as Ex.4 to 10 to the affidavit in reply. In so far as this declaration is concerned there are no dispute as to the execution thereof. However, it is contended by the learned counsel for the plaintiffs that the godown mentioned therein is a different godown then the godown in which suit is filed. Admittedly plaintiffs have not been able to show him that apart from the said godown there was no other

godown of the plaintiffs and/ or no other separate godown in which either the father of the plaintiff was partner or co-owner in respect thereof.

4. In the light of the fact that the declaration are admitted and payment is received therein which includes payment of the godown it is not possible to pass any interim relief restraining the defendant either from alienating, encumbering or parting with possession thereof or creating any third party interest of the said godown or appointment of receiver is sought by the plaintiff. In the aforesaid circumstances, motion is dismissed. No order as to costs.